Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-971

ANGELO CEFALU
APPELLANT–PETITIONER

v.

GLOBE NEWSPAPER COMPANY
APPELLEE–RESPONDENT

APPEAL FROM AND PETITION FOR A WRIT OF CERTIORARI TO
THE MASSACHUSETTS APPEALS COURT

Reply Brief
Of the Appellant-Petitioner
in opposition to the Motion to Dismiss and to the Brief
in Opposition to Petition for a Writ of Certiorari.

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This reply is necessitated by the Appellee-Respondent attempt to prejudice this Court both by argument and by misrepresentations.

On the Proceeding Below

If he is trying, as it appears that he does, to give the impression that appellant sued only because a photograph was published, which showed him to be an unemployed man collecting benefits while he was not, the appellee-respondent is certainly and smoothly making a gross misrepresentation of the cause of this litigation, which, in reality, started because of the damage caused by the defamatory content of the April 23, 1973 article, which is conveniently left unmentioned.

Although this is not the place or time to attract the attention

of this Court to the merits of the case, I have to mention the misrepresentation because it is an insidious attempt to prejudice this Court to think that I, the appellant brought suit frivolously and not because I was really hurt.

Misrepresentations like this and worse, which in a juryless environment have been easily effective against the awkward *pro se* appellant, have helped this case reach this Court, although we are here mainly because of the state's courts insensitivity to federal constitutional requirements.

On the Appellee's treatment of the Appeal's question.

Appellee has misrepresented that my claim is that Mass. R. Civ. P. 56 denies the right of jury trial "on its face". (Motion to dismiss page 5 II A). My claim (see jurisdiction statement) is that the rule is unconstitutional for denying the right to jury trial when it is compulsorily applied with finality in cases which by their very nature call for a jury trial, as guaranteed by the Seventh Amendment and, superfluously, by the "privileges and immunities" clause of the Fourteenth Amendment. Incidentally, as already hinted in the Jurisdictional Statement (page 24, line 7), as the right to a jury trial in this case can be seen to be founded also otherwise, namely in the very Massachusetts Constitution, creating thus a context different from *Alexander v. Virginia, 413 U.S. 836* and cases therein cited, the use of rule 56 should involve also the "due process" clause.

The appellee's argument of "the length of time that summary judgment procedures have existed, in one form or another," is devious to say the least. Summary judgment was never available in Massachusetts in tort cases, (see Jurisdictional Statement page 25), and I doubt if it was permissible in other jurisdictions.

It has been applied to these cases, at least to the instant one, by means of Rule 56, since its recent appearance. This rule not only is very young, but it was also drawn under the 28 U.S.C. 2072 Enabling Act which provides that it (the rule) shall not abridge, enlarge or modify any substantive rights. This Court, moreover, as it was mentioned in the Jurisdictional Statement at page 26, has already been alarmed in *Hutchinson v. Proxmire, 47 U.S.L.W. 4827, 4830, No. 9,* by the general and indiscriminate use of such Rule 56.

The thrust of *Alexander v. Virginia* was that "since Code #18.1-236.3 (Virginia) was not in force when the Constitution of the United States was adopted, a jury trial is not constitutionally required." *Alexander v. Commonwealth (Virginia) 182 S.E.2d. 43, 44(2).* Here the issue is different more general and touching the interest of all the American people. The narrowly aimed and summary decisions of Alexander v. Virginia and of the cases therein cited cannot dispose of it. After one is finally aware of the circumstances of those decisions, he cannot be any longer convinced that this Court has already even decided that the states courts' denial of a jury trial is not lacking in due process, as many have led us in to believe.

We, the people are entitled to a clear debate and a clear decision by this Court on such an important issue as jury trial and better people than I am should be invited to spend a little time and participate in the process of finding out whether we all have and should Americanly retain the power, or only some of us. The issue, indeed, involves the very basic question of whether in our land we all, as a people, ever had and do retain the ultimate power and are being served by our (whatever) government, or the latter has usurped that power and is actually ruling us.

On the treatment of the certiorari questions.

In dealing with the certiorari questions the applee-respondent chooses again to misrepresent what the appellant has said in the jurisdictional statement. Claiming it to be "difficult to understand fully" he does to this Court the favor to reconstruct the first question and in the process conveniently misrepresents that appellant has claimed that "rights guaranteed by the Constitution were denied to him by the manner in which the Commonwealth Appeals Court *articulated* its decision", when it is very clear, both in the statement of the question and in the argument treating it (Jurisdictional Statement 6-7, 26-32), that it was the process and the manner used to reach the decision that is lamented to be offensive to the Constitution. Is the appellee thinking that the appellant's jurisdictional statement will not be read by the Justices of this Court?

At page 7 of his motion to dismiss appellee also claims that the second certiorari question is not truly federal because "...a state court (can), in effect abolish actions for libel or for invasion of privacy...without implicat(ing) in the least any provision of the federal Constitution". That is certainly scary although also dubious. But even if it were possible for the state to do so, will the appellee at least concede that it could not do it in the name of the First Amendment of the federal Constitution, as it practically did at the end of the appeals court decision when it was concluded that "First Amendment freedoms require that this case be closed."? (Jurisdictional Statement App. G-8)

However, although when the media are involved it may work as if it did, Massachusetts has not yet claimed to have abolished actions for libel and invasion of privacy and it is, therefore, required to treat them with due process and with respect and

concern for the priviledges and all the other constitutional rights of the parties involved. And due process includes assuring a jury trial which, if it is opted for, is guaranteed not only as a priviledge under the federal Constitution, but also by the state Constitution, on top of everything.

Finally Appellee-Respondent tries to give the impression that the third certiorari question is a lamentation of what the appeals court found, when the Appellant-Petitioner has clearly stated and argued in his jurisdictional statement that it is not what the appeals court wrongly found, or pretended to have found, that is of importance to this Court, but the fact that, in order to explain what it pretended to have found, the appeals court resorted to the concealment of facts and affidavits and the concealment of the main body of the applicable law and the changing of words in the part of that law that it chose to use. (Mass. Supreme Judicial Court General Rule 3:25, Cannon 3 C (1), Jurisdictional Statement App. B-3)

Upon review by this court it will be easily seen that both the acting of the trial judge and of the appeals court have a lot to do with the federal and civilized requirements of due process and equal protection and respect of the basic rights of the IX Amendment.

Conclusion

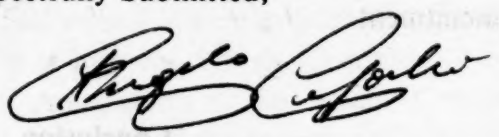
As we at this stage are only involved in convincing this Court to allow a debate on the question in appeal, the Appellee's argument at page 5 of his Motion to Dismiss, against the appeal's "jury-summary judgment" question must be interpreted as begging this Court not to give the opportunity for such debate.

What is the Appellee's motive? To win this case? But here we are not dealing with the merits of the case, although these, having never been dealt with, at some time should be considered, if only to be fair. We are here on appeal because we have stumbled in a too important issue, which should interest all Americans, as it does.

Although it is strange that the Appellee, a big newspaper which portrays itself as a guardian and watchdog of the people's interests, should disagree with the idea that the people anywhere in this land has and needs a right to a jury trial, not to be sacrificed for summary judgment or what this is claimed to ~~be~~ accomplish, it is certainly entitled to air its opposing view, but it should not do it now. At this stage it should join me, the appellant, to ask from this Court the opportunity for a debate, loudly and Americanly, and out of a sense of duty toward the very people that it constantly and presumptuously claims to represent.

Winning a particular case does not give anybody the right or excuse to hinder the defense of what, being more than a constitutional right, is perhaps the best and clearest expression of our concept of government.

Respectfully Submitted,



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